IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 764 OF 2006

Faiyaz Roshanali Makani & Ors. ... Petitioner

V/s.

Brihhamumbai Mahanagarpalika ... Respondent

Mr. Sanjay Jain i/b. A.H. Nanavati for the petitioner.
Mr. S.Ajit Kumar for respondents.

CORAM : F.I. REBELLO,
ANOOP V. MOHTA,JJ.
DATED : 21st April, 2006

P.C.

. Rule. Heard forthwith.

2. On matter being remanded to the Assistant Commissioner, A-Ward, an order was passed holding that the construction is unauthorised. That order is the subject matter of the present petition.

3. The contention of the petitioner is that this structure was subject matter of the Notice which was issued in the year 1987. That Notice would show dimensions of the structures are the same as is now set out. On representation by the petitioner, that Notice was withdrawn. It is further submitted that the petitioner has authorisation for construction of the said cupboard.

4. On the other hand on behalf of respondent-Corporation the learned Counsel draws attention to page No. 31 and 65 of the petition to point out that the cupboard as earlier constructed was at different location and is presently shown in the house gate between Ismail Building and Darga Building which was not the position earlier. No such finding has been recorded by the Assistant Commissioner. That being the case, in our opinion the impugned order is set aside. The matter is remanded back to the Assistant Commissioner for recording finding of fact as to where the earlier structure is situated and whether the present structure is in a place, different from where it was sanctioned and to pass necessary orders.

5. The entire exercise to be completed within twelve weeks after giving notice to the petitioner.

6. Till passing of the order, the structure as existing not to be demolished.

7. Rule made absolute with no order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]